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7 IN FEDERAL DISTRICT COURT FOR THE  
8 NORTH CAROLINA - MIDDLE DISTRICT  
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10 PUNCHARUCH PINNGAM, an  
11 individual,

12 Plaintiff,

13 vs.

14 MICHAEL KEARNEY, an individual,

15 Defendant.  
16  
17

NO.

**COMPLAINT**

18 COMES NOW Plaintiff PUNCHARUCH PINNGAM by and through  
19 counsel and alleges the following.  
20

21 **I. INTRODUCTION**

22 1. This is a lawsuit for immigration financial support under the Form I-864,  
23 Affidavit of Support. The Form I-864 was created by the United States Congress  
24 in 1996 to ensure that family-sponsored immigrants are ensured a basic level of  
25 financial wellbeing, sufficient to meet the most basic needs of life. In mandating  
26 the Form I-864, Congress required visa petitioner, rather than the American  
27 people, serve as a financial safety net to new immigrants.

2. The Form I-864 is a legally binding contract between the sponsor and the United States government, of which the intending immigrant is a third-party beneficiary.

3. Plaintiff is the Beneficiary of a Form I-864 signed by Defendant.

4. Defendants has failed to provide Plaintiff with the basic level of income support promised in the Form I-864 contract. This lawsuit seeks to compel the Defendant to fulfill the support duty mandated by the Form I-864 contract and federal law.

## II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this action arises under the federal Immigration and Nationality Act *See* 8 U.S.C. § 1183a(e)(I).

6. This Court has personal jurisdiction because Defendant resides in this District.

7. Additionally, this court has personal jurisdiction over Defendant as, by signing the Form I-864, Defendant submitted to the jurisdiction of any court with subject matter jurisdiction over Plaintiff's claims. 8 U.S.C. § 1183a(a)(1)(C).

8. Venue is proper in this District as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. 28 U.S.C. § 1391(b)(2).

#### IV. PLAINTIFF

9. Plaintiff is a citizen of Kingdom of Thailand and lawful permanent resident (“LPR”) of the United States of America. *See* Exhibit 2 (Plaintiff’s passport).

10. Plaintiff resides in Liberty, North Carolina.

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**V. DEFENDANT**

11. Defendant is a citizen of the United States of America.

12. As further alleged below, Defendant served as Plaintiff's immigration sponsor by executing a Form I-864, Affidavit of Support, thereby contractually promising to provide a specified level of income to Plaintiff.

13. Defendant resides in Whitsett, North Carolina.

**VI. FACTUAL ALLEGATIONS**

**Background concerning the Form I-864, Affidavit of Support.**

14. United States immigration law has long prohibited immigration by individuals deemed likely to be a drain on public resources.

15. The current immigration statute, in effect at all times material to the facts alleged herein, forbids the entry of immigrants determined likely to become a "public charge." 8 U.S.C. § 1182(a)(4).

16. The Form I-864, Affidavit of Support ("Form I-864") is required for a family-based immigrant visa applicant to overcome public charge inadmissibility. *See* 8 U.S.C. § 1182(a)(4)(C).

17. The only family-based immigrants who are exempt from submitting a Form I-864 are those who qualify for submit a Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support. The Form I-864W is available primarily to intending immigrants who have previously been credited with at least 40 quarters of work in the United States.

18. Creation of the Form I-864 was mandated by Congress to ensure that certain classes of immigrants to the United States would be guaranteed a level of financial support necessary to meet basic human needs. *Cf.* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

1 19. The immigration agencies published interim regulations implementing  
2 the Form I-864 in the summer of 1997, which regulations were finalized in 2006.  
3 Affidavits of Support on Behalf of Immigrants, 62 Fed. Reg. 54346 (Oct. 20, 1997)  
4 (to be codified at 8 C.F.R. § 213.a1 *et seq.*) (hereinafter Preliminary Rules);  
5 Affidavits of Support on Behalf of Immigrants, 71 Fed. Reg. 35732 (June 21, 2006).

6 20. The Form I-864 has been mandatory in marriage-based immigrant visa  
7 cases at all times material to the case at bar.

8 21. The Form I-864 is a legally binding contract between the sponsor and the  
9 United States Government.

10 22. Signing the Form I-864, the sponsor agrees to provide the intending  
11 immigrant with any support necessary to maintain her at an income that is at  
12 least 125 percent of the Federal Poverty Guidelines for her household size.

13 23. The Federal Poverty Guidelines are published annually in the Federal  
14 Register, which published numbers govern the claims asserted herein.

15 24. The Form I-864 support obligation may be enforced by the immigrant  
16 beneficiary, who is a third-party beneficiary thereof.

17 25. Signing the Form I-864, the sponsor agrees to submit to the personal  
18 jurisdiction of any federal or state court that has subject matter jurisdiction over a  
19 lawsuit against the sponsor to enforce obligations under the Form I-864.

20 26. Signing the Form I-864, the sponsor certifies under penalty of perjury that  
21 the sponsor has read and understands each part of the obligations described in the  
22 Form I-864, and agrees freely and without any mental reservation or purpose of  
23 evasion to accept each of those obligations in order to make it possible for the  
24 immigrant(s) listed in the Form I-864 to become lawful permanent residents of the  
25 United States.

1 27. The Form I-864 sponsor also agrees to notify the Government of any  
2 change in the sponsor's address within 30 days of the change by filing a Form I-  
3 865.

4 28. A sponsor's duties under the Form I-864 commence when the beneficiary  
5 becomes an LPR "based on" the Form I-864.

6 29. A Form I-864 sponsor must continue to perform under the contract until  
7 the occurrence of one of five events (collectively "the Terminating Events") set  
8 forth in the contract.

9 30. The sponsor's obligation under the Form I-864 conclude once the  
10 beneficiary becomes a U.S. citizen (the "First Terminating Event").

11 31. The sponsor's obligation under the Form I-864 concludes once the  
12 beneficiary has worked or can receive credit for 40 quarters of work under the  
13 Social Security Act (the "Second Terminating Event").

14 32. The sponsor's obligation under the Form I-864 concludes once the  
15 beneficiary is no longer a permanent resident and has departed the U.S. (the  
16 "Third Terminating Event").

17 33. The sponsor's obligation under the Form I-864 concludes once the  
18 beneficiary is subject to an order of removal but applies for and obtains in removal  
19 proceedings a new grant of adjustment of status based on a new affidavit of  
20 support, if required (the "Forth Terminating Event").

21 34. The sponsor's obligation under the Form I-864 concludes once the  
22 beneficiary dies (the "Fifth Terminating Event").

23 35. In order to serve as a Form I-864 sponsor, an individual must  
24 demonstrate income at our above 125% of the Federal Poverty Guidelines (FPG)  
25 for the individual's household size.

26 36. To serve as a sole Form I-864 sponsor, a visa petitioner must be able to  
27 demonstrate household income at or above 125% of the FPG.

1 37. If the income of the visa petitioner is below 125% of the FPG, the  
2 individual may demonstrate that he or she owns assets equal to at least five times  
3 the income shortfall (or three times in the case of marriage-based case). Such  
4 assets must be convertible to U.S. cash within 12 months.

5 38. An immigration petitioner who lacks income sufficient to serve as a Form  
6 I-864 sponsor may obtain the assistance of an additional individual who agrees to  
7 serve as a “joint sponsor” by executing and filing an additional Form I-864,  
8 Affidavit of Support.

9 39. If the Government determines that the visa petitioner lacks sufficient  
10 income and assets to serve as a sole Form I-864 sponsor, the individual will be  
11 issued with a notice describing the financial deficiency and notifying the  
12 individual of the possibility of submitting an additional Form I-864 signed by a  
13 joint sponsor.

14 40. If the underlying family-based immigration case is permitted to proceed  
15 without a joint sponsor, this demonstrates the Government’s determination that  
16 the visa petitioner has the ability to maintain household income, including the  
17 intending immigrant, at a level at least 125% FPG.

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19 **Plaintiff’s immigration to the United States.**

20 41. Defendant is a citizen of the United States of America.

21 42. Plaintiff is a citizen of Kingdom of Thailand. *See* Exhibit 2 (Plaintiff’s  
22 Thai passport).

23 43. Plaintiff entered the United States on February 28, 2015 on a B1/B2  
24 category visa. *See* Exhibit 2, p. 3.

25 44. Plaintiff and Defendant were married on May 9, 2015.

26 45. Defendant thereafter commenced the process of facilitating Plaintiff’s  
27 immigration to the United States.

1 46. On June 7, 2015, Defendant signed a U.S. Citizenship and Immigration  
2 Services (“USCIS”) Form I-130, Petition for Alien Relative (the “Form I-130”).  
3 See Exhibit 3 (Defendant’s Form I-130 petition), p. 2.

4 47. The Form I-130 listed Plaintiff as the intending immigrant beneficiary of  
5 the petition. Exhibit 3, p. 1.

6 48. Defendant caused the Form I-130 to be filed with USCIS, which received  
7 the petition on or about July 20, 2015 and assigned it processing number  
8 MSC1591414504. Exhibit 3, p. 1.

9 49. By filing the Form I-130, Defendant had initiated the process of securing  
10 United States immigration status for Plaintiff.

11 50. The Defendant’s purpose in filing the Form I-130 was to ultimately  
12 secure status as a Lawful Permanent Resident (LPR) for Plaintiff.

13 51. On July 14, 2015, Plaintiff signed a USCIS Form I-485, Application to  
14 Register Permanent Residence of Adjustment Status with USCIS. Exhibit 4  
15 (Plaintiff’s Form I-485 application), p. 6.

16 52. Under the “Application Type or Filing Category,” Plaintiff indicated that  
17 the Form I-485 was a family-based based petition. Exhibit 4, p. 1.

18 53. Plaintiff caused the Form I-485 application to be filed with USCIS,  
19 which received the application on or about July 20, 2015 and assigned it  
20 processing number MSC1591414503. Exhibit 4, p. 1.

21 54. Plaintiff’s Form I-485 application was based on Defendant’s Form I-130  
22 petition as but for Defendant’s petition, Plaintiff would not have qualified to file  
23 the Form I-485 based on the class of admission listed therein.

24 55. An initial review of Plaintiff’s Form I-485 application was conducted by  
25 agents of the USCIS National Benefits Center (NBC). *See* Exhibit 5 (National  
26 Benefits Center – Contractor Processing Review Checklist for AOS I-485s).

1 56. The NBC identified that Plaintiff had not filed a Form I-864, Affidavit of  
2 Support, with her Form I-485 application. Exhibit 5, p. 7.

3 57. Plaintiff did not qualify for any of the grounds that would have  
4 permitted filing a Form I-864W in lieu of the Form I-864.

5 58. On August 7, 2015 USCIS issued a Request for Initial Evidence (RFE) to  
6 Plaintiff in connection to her Form I-485 application. Exhibit 6 (Request for  
7 Initial Evidence).

8 59. The RFE informed Plaintiff that she was required to submit a  
9 “completed and Signed Form I-864) within 87 days. Exhibit 6, p. 1.

10 60. On September 1, 2015, Defendant signed a Form I-864, listing Plaintiff  
11 as the intending immigrant beneficiary. Exhibit 1 (Defendant’s Form I-864), pp.  
12 2 & 7.

13 61. Defendant caused the Form I-864 to be filed with USCIS in support of  
14 Plaintiff’s Form I-485 application.

15 62. In support of the Form I-864, Defendant filed proof of his income in the  
16 form of documentation of his federal income tax filings with the Internal  
17 Revenue Service. Exhibit 1, pp. 13-24.

18 63. On October 10, 2015, the National Benefits Center marked Defendant’s  
19 Form I-864 as “Reviewed/Qualified by NBC.” Exhibit 1, p. 1.

20 64. On November 12, 2015, USCIS issued a notice to Plaintiff, informing her  
21 that she had been scheduled for an initial interview in connection to her Form I-  
22 485 application. Exhibit 7, p. 1 (Interview notice).

23 65. On December 21, 2015, USCIS approved Defendant’s Form I-130  
24 petition. Exhibit 3, p. 1.

25 66. On December 21, 2015, USCIS approved Plaintiff’s Form I-485  
26 application. Exhibit 4, p. 1.



1 67. Plaintiff was granted status as an LPR of the United States on  
2 December 21, 2015. Exhibit 8 (Plaintiff's Form I-551 Permanent Resident card).

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4 **Defendant's breach of contract.**

5 68. Defendant's duties under the Form I-864 commenced on December 21,  
6 2015.

7 69. Plaintiff's LPR status was based on Form I-864 signed by Defendant.

8 70. Plaintiff's LPR status was based on the Form I-864 because but for the  
9 fact that the Defendant submitted that Form, the Government would not have  
10 issued LPR status to Plaintiff.

11 71. Plaintiff's LPR status was based on the Form I-864 because the  
12 Defendant executed that document, caused it to be filed in support of Plaintiff's  
13 application for status as an LPR, and Government relied upon the existence of  
14 the Form I-864 in granting LPR status to Plaintiff.

15 72. Since December 21, 2015, Plaintiff's income has, from time to time,  
16 fallen beneath 125% FPG for the Plaintiff's household size.

17 73. The Defendant has failed to provide support necessary to ensure that  
18 the Plaintiff's income is at least 125% FPG since December 21, 2015.

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20 **Facts concerning Terminating Events.**

21 74. No event has occurred that would constitute a Terminating Event under  
22 the Form I-864.

23 75. First Terminating Event has not occurred because Plaintiff has not  
24 become a U.S. citizen.

25 76. The Second Terminating Event has not occurred because Plaintiff has  
26 neither worked nor can receive credit for 40 quarters of work under the Social  
27 Security Act.

1 77. The Third Terminating Event has not occurred because beneficiary has  
2 not both lost status as a permanent resident and departed from the U.S.

3 78. The Forth Terminating Event has not occurred because the beneficiary  
4 is not both subject to an order of removal and has also applied for and obtained  
5 in removal proceedings a new grant of adjustment of status based on a new  
6 affidavit of support (if required).

7 79. The Fifth Terminating Event has not occurred because Plaintiff is alive.

8 80. Defendant's duties under the Form I-864 remain in effect.

## 9 10 **VII. CLAIMS FOR RELIEF**

### 11 **1 – Breach of contract.**

12 81. Plaintiff re-alleges and incorporates all paragraphs above as though  
13 fully stated herein.

14 82. By executing the Form I-864, Defendant entered into an express written  
15 contract with the United States Government.

16 83. Plaintiff is a third-party beneficiary of the Primary Sponsor I-864  
17 Contract.

18 84. Plaintiff has standing as third-party to enforce his rights under the  
19 Primary Sponsor I-864 Contract.

20 85. Under the express terms of the Form I-864 Defendant agreed to provide  
21 Plaintiff with any support necessary to maintain her at an income that is at  
22 least 125 percent of the Federal Poverty Guidelines for her household size.

23 86. Defendant's responsibility to provide income support commenced on  
24 December 21, 2015 when Plaintiff became a lawful permanent resident of the  
25 United States.

26 87. All conditions precedent to Defendant's duty to perform on the Form I-  
27 864 were fulfilled as of December 21, 2015.

1 88. Defendant has breached the Form I-864 contract by failing to provide  
2 income support to Plaintiff.

3 89. As a result of Defendant's breach, Plaintiff has suffered damages in an  
4 amount to be determined at trial.

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6 **VIII. REQUEST FOR RELIEF**

7 Plaintiff requests the following relief from the Court:

8 A. Entry of judgment against the Defendants and in favor of Plaintiff each  
9 and every cause of action asserted herein;

10 B. An award of actual damages in an amount equivalent to 125% of the  
11 Federal Poverty Guideline for a household size of one for the period from  
12 December 21, 2015 to the date on which judgment issues;

13 C. A declaration that Plaintiff is entitled to continued receipt of financial  
14 support from Defendants in the amount of 125% the Federal Poverty Guidelines  
15 for his household size, less actual income, until the occurrence of one of the  
16 Terminating Events.

17 D. An order of specific performance, requiring Defendants to make monthly  
18 payments to Plaintiff for the amount set forth in Paragraph C above, until such  
19 time as a Terminating Event occurs.

20 E. An award of all Plaintiff's attorney fees;

21 F. An award of all Plaintiff's costs;

22 G. The right to amend this complaint to conform to the evidence presented at  
23 trial; and

24 H. Such other and further relief in Plaintiff's favor as the Court may deem  
25 just and equitable under the circumstances.

1 DATED: June 30, 2020,

2  
3 By: /s/Valeria Cesanelli  
4 Valeria Cesanelli  
SBN 45735

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